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Supreme Court, U.S.
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No. **05-1488**

In The

SUPREME COURT OF THE UNITED STATES

N.L. NEILSON,

Petitioner,

v.

CITY OF CALIFORNIA CITY,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE CALIFORNIA COURT OF APPEAL FOR THE FIFTH APPELLATE DISTRICT

BRIEF OF *AMICUS CURIAE* AARON L. KATZ IN SUPPORT OF PETITIONER N.L. NEILSON'S PETITION FOR WRIT OF CERTIORAI

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QUESTIONS PRESENTED FOR REVIEW

Although Petitioner recites that one of his questions presented for review is the appropriate level of judicial scrutiny, *amicus curiae* is of the opinion the following more global questions are encompassed therein:

I. DOES THE VOTING SCHEME FOR A DISCRETE ISSUE ELECTION THAT EXCLUDES THOSE ELECTORS MOST PRIMARILY, DIRECTLY AND SUBTANTIALLY AFFECTED VIOLATE EQUAL PROTECTION?

II. IS THERE A "BLANKET RULE" THAT RESIDENCY LIMITATIONS ARE *ALWAYS* PERMISSIBLE TO EXCLUDE PRIMARILY, DIRECTLY AND SUBSTANTIALLY AFFECTED ELECTORS, ESPECIALLY IN DISCRETE ISSUE ELECTIONS MANDATED BY LAW?

TABLE OF CONTENTS

Description *Page*

QUESTIONS PRESENTED FOR REVIEW i

TABLE OF CONTENTS ii

TABLE OF AUTHORITIES iv

INTEREST OF *AMICUS CURIAE* 1

INTRODUCTION 2

PROLOGUE 2

THE CONUNDRUM PRESENTED BY THE PETITION 5

General Elections 7

Discrete Issue Elections 7

STATEMENT OF THE CASE 8

LEGAL ARGUMENTS 10

I. *NOT* ALL ELECTIONS ARE THE SAME 10

II. VOTING SCHEMES FOR DISCRETE ISSUE ELECTIONS WHICH *EXCLUDE* THOSE ELECTORS MOST PRIMARILY, DIRECTLY AND SUBSTANTIALLY AFFECTED ARE SUBJECT TO HEIGHTENED REVIEW 10

III. THERE IS NO "BLANKET RULE," ESPECIALLY WHEN IT COMES TO DISCRETE ISSUE ELECTIONS MANDATED BY LAW, THAT RESIDENCY LIMITATIONS ARE *ALWAYS* PERMISSIBLE TO *EXCLUDE* ELECTORS, EVEN WHEN THEY ARE THE ONES *MOST* PRIMARILY, DIRECTLY AND SUBSTANTIALLY AFFECTED 11

TABLE OF CONTENTS (CONT.)

Description *Page*

IV. SINCE THERE ARE *ONLY* TWO SUPREME COURT CASES WHICH HAVE REVIEWED THE IMPACT OF DISCRETE PROPERTY TAX ISSUE ELECTIONS ON NON-LAND-OWNING RESIDENTS/NONRESIDENT LANDOWNERS, *THESE ARE THE CASES* WHICH SHOULD GUIDE THE COURT IN THIS REVIEW 13

V. VOTING SCHEMES THAT *EXCLUDE* THOSE ELECTORS *MOST* PRIMARILY, DIRECTLY AND SUBSTANTIALLY AFFECTED BY A DISCRETE ISSUE ELECTION ARE *NOT* PRESUMED TO BE CONSTITUTIONAL 17

VI. ASSUMING *ARGUENDO* THE SUBJECT VOTING SCHEME IS SUBJECT TO RATIONAL BASIS REVIEW, RESPONDENT'S INTEREST IN MAKING NONRESIDENT LANDOWNERS PAY WAS *NOT* A JUSTIFIABLE BASIS 18

CONCLUSION 19

APPENDIX A1

TABLE OF AUTHORITIES

United States Supreme Court Cases

Citation ***Page***

Associated Enterprises, Inc. v. Toltec District (1973) 410 U.S. 743 7

Avery v. Midland County (1968) 390 U.S. 474 9

Ball v. James (1981) 451 U.S. 355 7

Bullock v. Carter (1972) 405 U.S. 134 17

Carrington v. Rash (1965) 380 U.S. 89 4

Cipriano v. City of Houma (1969) 395 U.S. 701 5

City of Phoenix v. Kolodziejski (1970) 399 U.S. 204 5

Dunn v. Blumstein (1972) 405 U.S. 330 12

Evans v. Cornman (1970) 398 U.S. 419 13

Gordon v. Lance (1971) 403 U.S. 1 17

Gray v. Sanders (1963) 372 U.S. 368 9

Hadley v. Junior College District (1970) 397 U.S. 50 8

Hill v. Stone (1975) 421 U.S. 289 17

Holt Civic Club v. City of Tuscaloosa (1978) 439 U.S. 60 12

Kramer v. Union Free School District No. 15 (1969) 395 U.S. 621 6

Lockport v. Citizens for Community Action (1977) 430 U.S. 259 10

McGowan v. Maryland (1961) 366 U.S. 420 17

Nordlinger v. Hahn (1992) 505 U.S. 1 2

TABLE OF AUTHORITIES (CONT.)

United States Supreme Court Cases (cont.)

Citation	*Page*
Regan v. Taxation With Representation of Wash. (1983) 461 U.S. 540	4
Reynolds v. Sims (1964) 377 U.S. 533	8
Salyer Land Co. v. Tulare Water District (1973) 410 U.S. 719	6
Williams v. Vermont (1985) 472 U.S. 14	4

Published California Court Cases

Citation	*Page*
Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization (1978) 22 Cal.3rd 208	6
Apartment Assn. of Los Angeles County, Inc. v. City of Los Angeles (2001) 24 Cal.4th 830	2
Bjornestad v. Hulse (1991) 229 Cal.App.3rd 1568	1
Burrey v. Embarcadero Mun. Improvement Dist. (1971) 5 Cal.3rd 671	7
California Building Industry Assn. v. Governing Board of the Newhall School District (1988) 206 Cal.App.3rd 212	5
Candid Enterprises, Inc. v. Grossmont Union High School Dist. (1985) 39 Cal.3rd 878	4
Choudhry v. Free (1976) 17 Cal.3rd 660	7
County of Los Angeles v. Sasaki (1994) 23 Cal.App.4th 1442	3
Curtis v. Board of Supervisors (1972) 7 Cal.3rd 942	7

TABLE OF AUTHORITIES (CONT.)

Published California Court Cases (cont.)

Citation ***Page***

Erven v. Board of Supervisors (1991) 229 Cal.App.3rd 1568 7

Hoffman v. State Bar of California (2005) 113 Cal.App.4th 630 7

Howard Jarvis Taxpayers Assn. v. City of Riverside (1999) 73 Cal.App.4th 679 2

Los Angeles County Transportation Com. v. Richmond (1982) 31 Cal.3rd 197 7

Not About Water Committee v. Solano County Board of Supervisors (2002) 95 Cal.App.4th 982 9

Silicon Valley Taxpayers' Assn., Inc. v. Santa Clara Open Space Authority (2005) 130 Cal.App.4th 1295 4

Southern Cal. Rapid Transit Dist. v. Bolen (1992) 1 Cal.4th 654 14

California Constitution

Article ***Page***

Article XIII 2

Article XIIIA 2

Article XIIIA, §1 3

Article XIIIA, §1(b)(2) 4

Article XIIIA, §1(b)(3) 4

Article XIIIA, §4 2

Article XIIIC 2

TABLE OF AUTHORITIES (CONT.)

California Constitution (cont.)

Article	*Page*
Article XIIIC, §1(b)	1
Article XIIIC, §2(d)	3
Article XIIID	2
Article XIIID, §3(a)	2
Article XIIID, §4	2
Article XIIID, §6	3

California Statutes

Statute	*Page*
Elections Code, §321	5
Elections Code, §18521	4
Government Code, §16271(d)	3
Government Code, §26912	3
Government Code, §50077(a)	5
Government Code, §50077(b)	5
Government Code, §50079(b)	4

INTEREST OF *AMICUS CURIAE*[1]

Amicus curiae owns several properties in Santa Clara County, California[2]. Since some are located within revenue districts *other than* the one in which he resides, whenever a "county, city...special district, or any other local or regional governmental entity" [Article XIIIC, §1(b) of the California Constitution[3]] within one or more of these districts proffers a new special tax measure, he is prevented from voting. Therefore just like Petitioner, *amicus curiae* is a member of an insular group foreclosed hopelessly from the political process [*Bjornestad v. Hulse* (1991) 229 Cal.App.3rd 1568, 1592 (*Bjornestad*)]; classic *Taxation Without Representation*.

Because of the foregoing, *amicus curiae*, like Petitioner, has challenged the results of five separate special tax/bond elections [in Santa Clara County] upon Equal Protection grounds[4]. He also sought and secured Court of Appeal permission [A1] to join Petitioner as an *amicus curiae*.

The Opinion has/continues to have a negative impact on the sustainability of *amicus curiae*'s other pending cases as it has/currently is being used against him as precedent. Thus *amicus curiae* has a very real interest in the Petition.

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[1] Blanket consents indicating the parties' approval for the filing of this *amicus curiae* brief are filed contemporaneously with the Clerk of this Court. No counsel for any party authored this brief in whole or in part, nor has any person nor entity other than *amicus curiae* made monetary contribution towards the preparation or submission of this brief.

[2] The City of California City is located in one of California's 58 counties [Exhibit "G" to *amicus curiae*'s Motion for Order Judicially Noticing Designated Materials Incorporated Into His Proposed *Amicus Curiae* Brief filed in the Court of Appeal on February 16, 2005 ("RJN")]; Kern.

[3] Future references to the California Constitution are by Article, § *only*.

[4] A21 and A15 (fn 5) of the Court of Appeal's Opinion ["the Opinion"] memorialize *amicus curiae*'s equal protection and other arguments.

INTRODUCTION

The Petition is warranted because the Court of Appeal has decided an important federal question ["the residency requirement that limited who could vote on Measure L did *not* violate the equal protection clause of the United States Constitution" (A24)] in a manner that conflicts with relevant decisions of this Court which follow.

PROLOGUE

In response to rapidly rising real property taxes [*Nordlinger v. Hahn* (1992) 505 U.S. 1 (*Nordlinger*)], in 1978 voters by initiative made California the *first* state in the Union to impose *limits* on government's ability to impose new taxes against property [*Apartment Assn. of Los Angeles County, Inc. v. City of Los Angeles* (2001) 24 Cal.4th 830, 839] by adopting Proposition 13 [Article XIIIA]. In the wake of court decisions holding Proposition 13 did not apply to special assessments, local governments went hog-wild. Where once limited to financing streets, sidewalks, sewers and other capital improvements directly benefiting property, new assessments soon began to be imposed for general governmental services [*Howard Jarvis Taxpayers Assn. v. City of Riverside* (1999) 73 Cal.App.4th 679, 686]. Consequently in 1996 voters took step two in the Proposition 13 process [again by initiative] by adopting Proposition 218 [Articles XIIIC, XIIID] which placed analogous *limits* on property assessments, fees and charges [*Id.*, at 682-83].

Today Article XIIID, §3(a) states "no tax, assessment, fee [n]or charge shall be assessed by *any* agency upon *any* parcel of property or...*any* person as an incident of property ownership except: (1) the *ad valorem* property tax imposed [by]...Article[s] XIII and Article XIIIA; (2) any special tax receiving a two-thirds vote pursuant to §4 of Article XIIIA; (3) assessments as provided by...Article [XIIID, §4]; or, (4) fees/charges for property related services

as provided by...Article [XIIID, §6]." Given the maximum *ad valorem* tax rate stands at 1% [Article XIIIA, §1] of acquisition-value [*Nordlinger*, *supra*, at 505 U.S. 16], Article XIIIA, §4 special taxes have become one of local revenue districts' few remaining tax vehicles, and the one of choice[13].

California is divided into 6,500 or more revenue districts[5]. These districts consist of 58 counties[2], 551 cities, 1,055 K-12 public school districts, 72 community college districts and 4,763 independent special districts[6] ["any (*other*) agency of the state for the local performance of governmental or proprietary functions within limited boundaries" {California Government Code §16271(d)}]. After Proposition 13, property taxes were collected by counties and apportioned according to law [California Government Code, §26912] *to each of these districts* [*County of Los Angeles v. Sasaki* (1994) 23 Cal.App.4th 1442, 1451-52]. Since *each* has substantially the same general power as most local governments, under Proposition 13 *each* may levy Article XIIIA, §4 special taxes.

But because of the seemingly insurmountable hurdle of Article XIIIC, §2(d) ["no local government may impose, extend, or increase *any* special tax *unless* and *until* (it)...is submitted to the electorate and *approved by a two-thirds*

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[5] Exhibit "K" to RJN.

[6] Each year California's State Controller publishes an Annual Report that highlights the financial activities of California's special districts [fire and police protection; waste, water and irrigation systems; parks and recreation; libraries; hospitals; cemeteries; airports; marinas; zoos; open space, vector control and veterans memorial districts; etc.]. The latest report [as of June 30, 2003] for which financial information is available states there are 4,763 special districts [www.*sco.ca.gov/ard/local/locrep/districts/02-03/0203specialdistricts.pdf*)] in California.

vote"[7]], initially special taxes were rarely imposed, remained novel and were *not* perceived as a practical means of financeing [*Candid Enterprises, Inc. v. Grossmont Union High School Dist.* (1985) 39 Cal.3rd 878, 882]. However in a remarkable turn of events, local agencies of government have discovered that by manipulating the electoral process [removing those electors *most* primarily, directly and substantially affected by a special tax measure election, and the ones *most* likely to vote *no*[8]], they can accomplish that which was at first thought insurmountable[9].

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[7] Parenthetically, Article XIIIA, §§1(b)(2) and (b)(3) *ad valorem* taxes levied to pay the interest and redemption charges on bonded indebtedness for the acquisition or improvement of property also require voter approval [as do Article XIIID, §4 assessments and §6 fees/charges].

[8] California Government Code, §50079(b) exempts senior landowning residents from paying qualified special taxes. Although *amicus curiae* takes no issue with extending a tax exemption to senior landowners ["in structuring internal taxation schemes...states have large leeway in making classifications and drawing lines which, in their judgment, produce reasonable systems of taxation" {*Williams v. Vermont* (1985) 472 U.S. 14, 22}], he very much takes issue with allowing and encouraging them to vote for their approval [California Elections Code, §18521 makes it unlawful for any person to receive *any* valuable consideration ("a tax exemption has much *the same effect* as a cash grant...of the amount of tax (the exemptee)...ha(s) to pay" {*Regan v. Taxation With Representation of Wash.* (1983) 461 U.S. 540, 544})] for voting or refraining from voting on an election measure. Furthermore as *Carrington v. Rash* (1965) 380 U.S. 89, 94 (*Carrington*) instructs, "fencing out from the franchise *a[ny]* sector of the population because of the way they may vote is constitutionally *impermissible*."

[9] In *Silicon Valley Taxpayers' Assn., Inc. v. Santa Clara County Open Space Authority* ["the OSA"] (2005) 130 Cal.App.4th 1295, 1351 (fn 12) [although on review to the California Supreme Court, it is *not* cited for the rule of law declared but rather a factual admission by an agency of government] the OSA "in its respondent's brief [admitted that] in Santa Clara County...40% of...registered voters are *not* property owners]. Thus]... it may ...be...*easier* to obtain a 2/3 vote of registered voters than a weighted majority vote of property owners."

Unlike Cipriano v. City of Houma (1969) 395 U.S. 701 (*Cipriano*) and *City of Phoenix v. Kolodziejski* (1970) 399 U.S. 204 (*Phoenix*), in this case the *only* persons who pay the subject special taxes[10] are owners of property within Respondent's boundaries [California Government Code, §50077(b)]. Yet according to the Court of Appeal [A18], the *only* persons who were allowed to approve these taxes were ordinary registered voters[11], *whether or not landowners*[12]. This type of voting scheme helps explain the recent explosion in special tax ballot measures which are relentlessly bombarding landowners across California[13]. "California's grand experiment" [*Nordlinger, supra*, at 505 U.S. 18] *has evolved into a crisis of constitutional proportion.*

THE CONUNDRUM PRESENTED BY THE PETITION

Given the Measure L election was mandated by law [California Government Code, §50077(a)]; 40% or more of

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[10] Here an annual special tax of $75 per lot or parcel was proposed to be levied and collected on *the property tax roll* [§2 at A4].

[11] Citizens over age 18 who have registered to vote for/against legislators in primary or general elections [California Elections Code, §321].

[12] Although *California Building Industry Assn. v. Governing Board of the Newhall School District* (1988) 206 Cal.App.3rd 212, 237 declares Article XIIIA, §4 special taxes are those approved by voters *who themselves will be taxed*, since "voters are often *not* willing to impose taxes on themselves,...here in an unsurprising result [they]...gladly impose[d] taxes" *someone else* "alone [had to]...pay. [Although] this was directly at odds with the purpose and intent of [Article XIIIA,] §4's supermajority requirement," according to the Court of Appeal, there was no equal protection violation.

[13] *Amicus curiae* asks the Court examine just one election [November 2, 2004] in just one of California's 58 [Exhibit "G" to RJN] counties [Santa Clara]. 13 different ballot measures; each proposing local landowners *only* be taxed [either by special tax (Article XIIIA, §4), assessment (Article XIIID, §6) or *ad valorem* tax to repay general obligation bonds (Article XIIIA, §1)]; and, each employing the challenged voting scheme.

those voting[7] were *residents qua residents*[14] [*Salyer Land Co. v. Tulare Water District* (1973) 410 U.S. 719, 729-30 (*Salyer*)]; 90% or more of those most primarily, directly and substantially affected[15] were *excluded* from the Measure L election's voting scheme[16]; and, the Court of Appeal employed rational basis review [A22]; and it is hard to imagine how Petitioner *could not* have been *more disproportionately* impacted[25] [*Kramer v. Union Free School District No. 15*[17] (1969) 395 U.S. 621, 633 (*Kramer*)]. In fact it raises the more fundamental question, *why even go through the artifice of an election*?

Although Proposition 13 "change[d] the previous system of real property taxation and...procedure [in California] by imposing important *limitations* on the assessment and taxing powers of state and local governments" [*Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization* (1978) 22 Cal.3rd 208, 218 (*Amador*)], surprisingly[18] the Peti-

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[14] Because the subject special taxes "primarily affect land within [Respondent's] boundaries[10] [there was]...no way...the economic burdens of [those taxes could possibly]...fall on *residents qua residents*."

[15] Natural person residents owning more than a single parcel, and non-citizen, non-natural person resident and nonresident landowners.

[16] "We have over 50,000 privately-owned subdivided lots...and approximately 3,800 registered voters...This means...*every* voter who votes...carries over *ten times the taxing power*...because *every one* of those property owners supports the city *with their special tax payments*"[10] [A3]

[17] Even though *Kramer* did *not* involve a discrete issue election, in *Phoenix* where such an election *was* at issue, this Court declared "the principles of...*Kramer* dictate a *like result* [because]...the differences between the interests of property owners and...nonproperty owners are *not* sufficiently substantial to justify excluding [*either*] from the franchise" [*Phoenix*, *supra*, at 399 U.S. 208-209, 210].

[18] Maybe *not* so surprising given *where else* must an agency of government obtain "qualified elector" approval as a pre-condition to levying new taxes against property?

tion is one of first impression [A23]. Although "problems... respecting the interpretation of particular provisions [of Article XIIIA were]...deferred for [later] resolution" [*Los Angeles County Transportation Com. v. Richmond* (1982) 31 Cal.3rd 197, 201] "in future cases [where their] application... were at issue" [*Amador, supra*, at 22 Cal.3rd 247], Mr. Neilson is apparently the first to challenge on equal protection grounds, Proposition 13's voting scheme.

Given the distinction between *general* and *discrete issue* elections [see Argument I, *infra* (below)],

General Elections: *Amicus curiae* is aware of cases addressing exclusion of: residents neither primarily affected nor impacted by landowner *only* voting schemes [*Salyer, supra*, at 410 U.S. 730; *Associated Enterprises, Inc. v. Toltec District* (1973) 410 U.S. 743 (*Associated Enterprises*); *Ball v. James* (1981) 451 U.S. 355, 367 (*Ball*)]; landowners neither primarily affected nor impacted by resident *only* voting schemes [*Burrey v. Embarcadero Mun. Improvement Dist.* (1971) 5 Cal.3rd 671; *Curtis v. Board of Supervisors* (1972) 7 Cal.3rd 942; *Erven v. Board of Supervisors* (1975) 53 Cal.3rd 1004, 1017]; and, *both* residents [*Choudhry v. Free* (1976) 17 Cal.3rd 660, 666] and landowners [*Bjornestad*] equally affected by intermediate voting schemes.

Discrete Issue Elections: Although *amicus curiae* is aware of cases addressing exclusion of residents primarily affected or impacted by landowner *only* voting schemes [*Cipriano* and *Phoenix*], until now he knew of *none* addressing exclusion of landowners primarily affected or impacted by a resident *only* voting scheme in a *discrete issue* election. This helps to explain why "the [Petition]...does *not* fit neatly into any established analytical mold" [*Hoffman v. State Bar of California* (2005) 113 Cal.App.4th 630, 640 (*Hoffman*)].

As more states follow California's "grand experiment" [*Nordlinger*, *supra*, at 505 U.S. 18] by adopting their own Proposition 13s, the constitutional crisis which *amicus curiae* raises is destined to become more widespread.

STATEMENT OF THE CASE

Although Petitioner has presented a Statement of the Case below, *amicus curiae* is of the opinion it omits important facts that demonstrate the *disproportionate* nature of the challenged voting scheme[19]. For instance, Respondent exhibits an adult population of roughly 5,800 [Exhibit "A" to RJN] who reside in a very small portion of a 203 square mile municipality[20] [Exhibit "F" to RJN] in the Mojave Desert [Exhibit "E" to RJN]. Of the "over 50,000 privately-owned subdivided lots" [Petitioner's Appendix filed with the Court of Appeal ("AA") 59], 2,820[21] are occupied housing units [Exhibit "B" to RJN]; a sprinkling [commercial/industrial] are non-housing units; and, a whopping 50,000 are unimproved lots *in the desert* mostly owned by nonresidents.

Since Measure L taxes parcels in *rem* rather than persons in *personam*[10], if the owner[s] of each city parcel had been assigned one vote, Respondent's population would represent 1,950 votes. Non-natural person and non-citizen

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[19] *Amicus curiae* believes recognizing the *disproportionate* nature of Respondent's voting scheme[25] is critical to resolving the equal protection issue presented because as *Hadley v. Junior College District* (1970) 397 U.S. 50, 56 (fn 6) (*Hadley*) instructs, the one-person, one-vote principle announced in *Reynolds v. Sims* (1964) 377 U.S. 533, 558 (*Reynolds*) is "*not*...required [in] a popular election [where the]... State elects certain functionaries [which]...so *disproportionately* affect different groups."

[20] By land mass, the third *largest* in California.

[21] 226 occupied housing units were mobile homes which were *not* taxed by Measure L[10] [AA 69, ¶2; AA 75, ¶3; AA 81, ¶2; §§1, 2 and 5 at AA 85-86]. One-third of Respondent's housing units were tenant-occupied [Exhibit "C" to RJN] by a third of the population [Exhibit "D" to RJN].

resident and nonresident landowners on the other hand, would represent roughly 50,000 votes. Thus by crafting a voting scheme whereby the votes of persons rather than the parcels they represented[26] were canvassed, roughly 3,800[22] registered voters[23] [AA 59 (of which roughly 1,265 were non-landowners)], were able to determine the tax fate of approximately 50,000 parcels. Although Respondent unabashedly exploited the effects of this classification in the voters pamphlet by asserting the weight of each vote represented *ten times*[16] the taxes to be imposed[24], in actuality, it was closer to *twenty-five times*[25]! In other words, Respondent manipulated the voting weight of those primarily affected by imposing 95% of the cost for general governmental services onto 90% of those *excluded* from its voting scheme!

Respondent *cannot* argue nonresident landowners were *not* primarily affected by the Measure L election because along with natural person resident landowners, they

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[22] Given the election's results [A5], only 1,609 registered voters. And given Measure L passed by just 54 votes [1,128 "yes" versus 481 "no" votes], its *disproportionate* impact on landowners could not be clearer[25].

[23] *Reynolds*, *supra*, at 377 U.S. 562, 568 declares "qualified electors" not only have the constitutional right to vote [*Id*., at 377 U.S. 554, 562; *Hadley*, *supra*, at 397 U.S. 52], but to *not* have their votes wrongfully denied, debased or diluted [*Avery v. Midland County* (1968) 390 U.S. 474, 480]. Measure L's voting scheme wrongfully debased and diluted the weight of *other* qualified electors' [resident landowners'] votes.

[24] "How...can one person be given...ten times the voting power of another[16] in a statewide election merely because he lives in a rural area or ...in the smallest rural county" [*Gray v. Sanders* (1963) 372 U.S. 368, 379 80]?

[25] Substantiating *amicus curiae*'s assertion Measure L's voting scheme *disproportionately* impacted the class of voters most directly, primarily and substantially affected. "Application of the per capita voting scheme--the 'one person, one vote formula [Respondent] contend[s] is required... produced an anomalous *disproportionality*" [*Not About Water Committee v. Solano County Board of Supervisors* (2002) 95 Cal.App.4th 982, 1000]

were the *only* persons directly affected[10] [California Government Code, §50077(b); §2 at AA 81; 85-86].

LEGAL ARGUMENTS

I. *NOT* ALL ELECTIONS ARE THE SAME.

The first problem with the Court of Appeal's analysis of the issues raised by the Petition is its failure to account for the fact *not all elections are the same.* Consequently the constitutional rules that govern elections are *not all the same.* This Court recognized the distinction when it decided *Lockport v. Citizens for Community Action* (1977) 430 U.S. 259 (*Lockport*). For the reasons *amicus curiae* asserts, this Court declared discrete issue elections should be viewed *differently* than those for/against legislators because sometimes elections involve "tress and acres" rather than "people"[26] [*Id.*, at 430 U.S. 261]. When a discrete issue election like Measure L directly impacts property rather than people, the one-person, one-vote principle[19] quickly loses its appeal.

II. VOTING SCHEMES FOR DISCRETE ISSUE ELECTIONS WHICH *EXCLUDE* THOSE ELECTORS MOST PRIMARILY, DIRECTLY AND SUBSTANTIALLY AFFECTED ARE SUBJECT TO HEIGHTENED REVIEW.

Lockport declares that "in analyzing the propriety of recognizing distinctive voter interests in a 'single-shot' referendum...equal protection principles applicable in gauging the fairness of an election involving the choice of legislative representatives *are of limited relevance*[27]...because a "refer-

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[26] In contrast, the election in *Reynolds, supra*, at 377 U.S. 562 was about "people" rather than "trees and acres."

[27] In pointing to *Hoffman* ["a very useful introduction and summary of the law regarding equal protection and the right to vote" (A19)], these are the very "limited relevant" principles the Court of Appeal adopted.

endum puts one discrete issue to the voters [which]...is capable...of being analyzed to determine whether its adoption or rejection will have a *disproportionate impact* on an identifiable group of voters. [When] it [does,]... the question then is whether [the] State can recognize that impact either by limiting the franchise to those voters specially affected or by giving their votes a special weight" [*Id.*, at 430 U.S. 266].

The Measure L election's voting scheme had a *disproportionate* impact on an identifiable group of voters[25] [landowners within Respondent's boundaries] because they were the *only* persons directly to be taxed[10], yet by-and-large the ones excluded from voting. Thus the question: were its classifications "tailored so that the exclusion of [Petitioner] and members of his class [were] necessary to achieve [an] articulated state goal" [*Kramer*, *supra*, at 395 U.S. 632]? The second problem with the court of Appeal's analysis of the issues raised by the Petition is it *never* considered the true impact of the Measure L election on landowners.

III. THERE IS NO "BLANKET RULE," ESPECIALLY WHEN IT COMES TO DISCRETE ISSUE ELECTIONS MANDATED BY LAW, THAT RESIDENCY LIMITATIONS ARE *ALWAYS* PERMISSIBLE TO *EXCLUDE* ELECTORS; EVEN WHEN THEY ARE *MOST* PRIMARILY, DIRECTLY AND SUBSTANTIALLY AFFECTED.

The third problem with the Court of Appeal's analysis of the issues raised by the Petition is it in essence adopts a blanket rule[28] that *regardless* the election involved,

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[28] First it "conclude[d] the rational basis test should apply" [A22]. Although Respondents offered no explanation of reasons for excluding Petitioner from its voting scheme, the Court of Appeal conjectured it "*could have determined* [its]...residents [we]re most knowledgeable and inter-

residency restrictions can *always* be used to *exclude* possible electors, even where they are the ones *most* primarily, directly and substantially affected [*Kramer*] by an election issue. This so called rule comes from the Court of Appeal's *mistaken* analysis [AA20] of *Holt Civic Club v. City of Tuscaloosa* (1978) 439 U.S. 60 (*Holt*).

Rather than involving a "discrete issue" election [*Lockport*], let alone one that proposed imposing a tax on landowners *only*, *Holt* involved a challenge to the franchise in *general* elections – extension of equal footing to Holt residents with those residing within Tuscaloosa because the former were purportedly subjected to the latter's extra-territorial exercise of police powers. Thus it was a mistake for the Court of Appeal to extend *Holt*'s reasoning to the subject "discrete issue" case[29].

Moreover, a careful reading of the dissent in *Holt* makes the case either there is *no such* "blanket rule" [*Holt*, *supra*, at 439 U.S. 81-88], or if there is, it *only* applies where *bona fide* residency restrictions are imposed [*Dunn v. Blumstein* (1972) 405 U.S. 330, 343]. Here Respondent's voting exclusions based upon residency were *not bona fide* because the "reciprocal relationship between the process of government and those who subject[ed] themselves to that process by choosing to live within the area of its authoritative application [was] fractured [and]...*undermine*[*d*] the very purposes which have led this Court...to approve the application of *bona fide* residency requirements" [*Holt*, *supra*, at 439 U.S. 82]. Thus "when statutes distributing the franchise depend

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ested in all aspects of local affairs, on both the revenue and expenditure side of the ledger" [A24]. Using this litmus test, it is difficult to imagine *any* residency based voting limitation *not being constitutional*.

[29] Parenthetically and for the same reasoning, it was just as wrong for the Court of Appeal to extend the reasoning of *Hoffman*[27] to the subject case.

upon residency requirements, state-law characterizations of residency are *not controlling* for purposes of the Fourteenth Amendment" [*Carrington*, *supra*, at 380 U.S. 96; *Evans v. Cornman* (1970) 398 U.S. 419, 421].

Finally, the Court of Appeal overlooked an aspect of *Holt* of particular relevance to the subject review which *should have* changed the outcome. "In a footnote (*Holt*) *did* distinguish the...situation [therein] from [the one presented by this Petition"]; a city which exercise[s] *all* of its [traditional] powers" [such as the "power...to levy *ad valorem* taxes, invoke the power of eminent domain, and zone property for various types of uses" {also see *Hoffman*, *supra*, at 113 Cal.App.4th 645 (fn 9)}] over nonresidents [*Holt*, *supra*, at 439 U.S. 73 (fn 8), 75, 84-85]. Here Petitioner *was* subject to Respondent's "far-reaching" powers to levy *ad valorem and* special taxes against his property; invoke eminent domain; and, zone his property for various types of uses. Thus *unlike* the plaintiffs in *Holt*, Petitioner *was* entitled to complain of unequal voting scheme treatment.

IV. SINCE THERE ARE *ONLY* TWO SUPREME COURT CASES WHICH HAVE REVIEWED THE IMPACT OF DISCRETE PROPERTY TAX ISSUE ELECTIONS ON NON-LAND-OWNING RESIDENTS/NONRESIDENT LANDOWNERS, *THESE ARE THE CASES* WHICH SHOULD GUIDE THE COURT IN THIS REVIEW.

If we are to examine voting schemes for discrete issue elections *differently* from those for/against legislators [as *Lockport* instructs], then in this case we must *limit* our inquiry to just those "discrete issue" election cases which proposed imposing new exactions against property and here *there are only two*: *Cipriano* and *Phoenix*. But before examining these two cases, *amicus curiae* refers to three others

which address the right of landowners to vote where they are the *only* persons primarily, directly and substantially affected by an election's outcome.

In *Salyer* non-landowning residents challenged upon equal protection grounds the validity of a landowner *only* voting scheme for a water storage district's *general* elections. Because there "the operations of the district...*primarily affected* land within [its] boundaries;" and as such, there was "no way...the economic burdens of district operations [could] fall on *residents qua residents*;" this Court concluded "the popular election requirements enunciated in *Reynolds*... and succeeding cases [we]re *inapplicable*" [*Salyer*, *supra*, at 410 U.S. 729-730].

"*Salyer*...is analytically linked to th[is] Court's subsequent decision in *Ball*...On facts strikingly different... th[is] Court reached an *identical* result, ruling...the principle of *Reynolds*...did *not* apply to a [*general*]...election ...of...a water reclamation district...[since] the reclamation district's activities fell *disproportionately* on the specific class which the statutory voting scheme enfranchised...[Thus this Court ruled] 'the [landowner *only*] voting scheme...[*was*] constitutional because it b[ore] a reasonable relationship to its statutory objectives'...[In other words,] *only* [landowners] were subject to the acreage-based taxing power of the district, *only* they had committed capital to the district through assessments, and *only* their land was subject to liens to secure district bonds" [*Southern Cal. Rapid Transit Dist. v. Bolen* (1992) 1 Cal.4th 654, 667-68 (*SCRTD*)].

"A third decision in the trilogy of high court opinions upholding property-based voter qualification schemes bears mention. In *Associated Enterprises*...th[is] Court, in a brief *per curiam* ruling decided the same day as *Salyer*...held that a...statute conditioning voting...did *not* violate equal pro-

tection...in a referendum authorizing the establishment of a watershed district on property ownership" [*SCRTD, supra*, at 1 Cal.4th 669 (fn 5)].

These three cases make clear [especially in light of *Ball*] that *rather than residency*, the constitutionally decisive factor is whether the voting scheme reflects the "narrow primary purpose for which the [public entity] was created?"[30]

In *Cipriano* a landowner *only* voting scheme for a "discrete issue" revenue bond election [which would tax local property owners] was declared invalid *not* because it impermissibly denied the franchise to nonproperty owning residents *in their capacity as residents* [i.e., *Reynolds*]; but because the subject revenue bonds were to be paid from utility operations. Since both property owners and non-property owners used those utilities and paid their rates, this Court concluded *both* were *primarily, directly and substantially affected* [*Kramer*]; and, the *impact* of the revenue bond issue on them was *unconnected* to property taxpayer status [*Cipriano, supra*, at 395 U.S. 706-07].

Similarly in *Phoenix* a landowner *only* voting scheme for a "discrete issue" general obligation bond election [which in part taxed local property owners] was challenged by non-landowning residents and declared invalid *not* because it

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[30] "No one reviewing this area of the high court's equal protection jurisprudence can fail to be impressed with the result in *Ball* – not because the opinion represents an analytical advance over the principles developed in *Salyer* but because it illustrates the majority's steadfast willingness to adhere to the *Salyer* analysis...Clearly in light of *Ball*, the... constitutionally decisive fact [distinctions between governmental function 'do *not* amount to a constitutional difference' (*Ball, supra*, at 451 U.S. 365-66)] is that the voting scheme at issue reflect...the 'narrow primary purpose for which the [public entity wa]s created' (citing *Ball, supra*, at 451 U.S. 369)" [*SCRTD, supra*, at 1 Cal.4th 668-69].

impermissibly denied the franchise to nonproperty owning residents *in their capacity as residents* [i.e., *Reynolds*], but because the "differences in interests of property owners and nonproperty owners were *not* sufficiently substantial to justify excluding nonproperty owners from voting." In other words, residents [because they *too* paid {more than half of the bonds' debt service requirements were satisfied from *other* local taxes paid by nonproperty owners (*Phoenix*, *supra*, at 399 U.S. 209-10)}] *as well as property owners* were *both primarily, directly and substantially affected* [*Phoenix*, *supra*, at 399 U.S. 212-13].

Thus *Cipriano* and *Phoenix* make clear that *rather than residency*, the constitutionally decisive voting scheme factor in "discrete issue" election cases "is the *extent of the impact* of the election on those within and those outside the challenged voting classification" [*SCRTD*, *supra*, at 1 Cal.4th 671].

Here, it cannot be questioned that Respondent's decision to levy a special tax had a particular *impact* on an identifiable group of voters – *only* owners of property upon which the tax was to be imposed [*Id.*, at 1 Cal.4th 686]. "*All* of the costs of [the subject special taxes...we]re assessed against land[10]...[and] when [landowners we]re delinquent in payment...such charges bec[a]me a lien on the[ir] land[s]." Since the subject special taxes "*disproportionately* affect[ed] landowners"[25] *only* [*Salyer*, *supra*, at 410 U.S. 729], if it was improper to deny the franchise to non-property owners in *Cipriano* and *Phoenix*, it was equally improper to deny it to nonresident landowners in the subject case.

V. VOTING SCHEMES THAT *EXCLUDE* THOSE ELECTORS MOST PRIMARILY, DIRECTLY AND SUBSTANTIALLY AFFECTED BY A DISCRETE ISSUE ELECTION ARE *NOT* PRESUMED TO BE CONSTITUTIONAL.

As a general rule "legislatures are presumed to have acted within their constitutional power despite the fact that, in practice, their laws result in some inequality" [*McGowan v. Maryland* (1961) 366 U.S. 420, 425-26]. However that presumption is *not* the case when *as here* a classification jeopardizes the exercise of a fundamental right[31] [*Nordlinger*, *supra*, at 505 U.S. 10]. For this reason "in an election of [arguable] general interest, restrictions on the franchise *of any character must* meet a *stringent test* of justification" [*Hill v. Stone* (1975) 421 U.S. 289, 298. And in an election of special interest, restrictions on the franchise must meet the "narrow primary purpose for which the" public entity was created[30] test. Under either, the subject voting scheme *fails*.

The strict standard of review has long been held to apply to voting legislation which *excludes* [rather than includes] an "identifiable class" of voters [*Gordon v. Lance* (1971) 403 U.S. 1, 7] from participation [*Kramer*[17], *supra*, at 395 U.S. 627-28, 632, 638-39; *Cipriano*, *supra*, at 395 U.S. 704; *Phoenix*, *supra*, at 399 U.S. 209]. Although not every classification is subject to strict scrutiny review, the "compelling interest" measure *must* be applied whenever a classification has a "real and appreciable [as opposed to 'only minimal'] impact" upon the equality, fairness and integrity of the electoral process" [*Bullock v. Carter* (1972) 405 U.S. 134, 144]. Given here Respondent's non-landowning residents were *less* interested and affected by Measure L than landowners of all kinds [because *only* landowners would pay[10]],

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[31] The right to vote is considered fundamental and preservative of other basic political rights[22] [*Reynolds*, *supra*, at 377 U.S. 562].

the subject voting scheme was "*not* sufficiently tailored to... justify the denial of the franchise to [Petitioner] and members of his class."[32]

VI. ASSUMING *ARGUENDO* THE SUBJECT VOTING SCHEME IS SUBJECT TO RATIONAL BASIS REVIEW, RESPONDENT'S INTEREST IN MAKING NONRESIDENT LANDOWNERS PAY WAS *NOT* A JUSTIFIABLE BASIS.

The "rational basis" test merely requires that a challenged "voting scheme not be 'wholly irrelevant' [or 'reasonably related'] to the achievement of [its statutory] objectives" [*Salyer*, *supra*, at 410 U.S. 730]. Here the Court of Appeal conjectured it was rational for Respondent to *exclude* 50,000 of the *most* primarily, directly and substantially electors because its residents were purportedly the most knowledgeable and interested in the city's revenue matters[28] [A24]. Stated differently, it was purportedly rational for Respondent to concoct a voting scheme that ensured nonresident landowners [versus its non-landowning residents] would be the ones to subsidize the cost of Respondent's general governmental services. *Amicus curiae* contends this reasoning is arbitrary, capricious and bears no reasonable relationship [*Salyer*] to the objective of generating revenue from sources that directly impact *all* residents. Furthermore Respondent's voting scheme was really a thinly veiled means of impermissibly excluding otherwise "qualified electors" simply because of the way Respondent perceived they would vote[8].

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[32] Strict scrutiny review was employed in *Cipriano* and *Phoenix* not because their voting schemes excluded non-landowning residents but rather, because there was no basis for concluding nonproperty owners were substantially less interested in the subject bonds as property owners [*Cipriano*, *supra*, at 395 U.S. 706-07; *Phoenix*, *supra*, at 399 U.S. 212].

In considering what represents "rational or reasonable" considerations for equal protection tax purposes, this Court weighed in on the subject in *Nordlinger*, *supra*, at 505 U.S. 13. There this Court acknowledged California's distinction between new and existing property owners. Whereas "a new owner has full information about the scope of *future tax liability before* acquiring...property...[in] contrast, the *existing owner, already saddled with his purchase*, does *not* have [an] option...if taxes become prohibitively high." In *Nordlinger* this Court recognized California's public policy that "it is worse to have owned and lost than never to have owned at all."

Being an existing property owner and having no option other than to lose, the Court of Appeal's conjectured reasoning[28] is now the exact *opposite* making the subject classification, *not* rationally related to the achievement of Proposition 13's objectives.

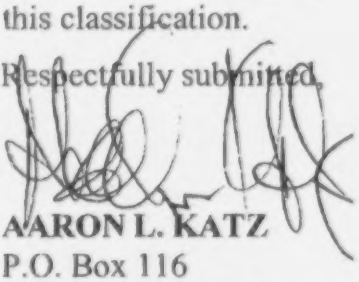
When the State's sole justification for excluding primarily, directly and substantively impacted electors from an election mandated by law is that the classification provides a "rational basis" for limiting the franchise to those voters with a "special interest," that justification does *not* meet the "exacting standard of precision we require of statutes which selectively distribute the franchise" [*Cipriano*, *supra*, at 395 U.S. 706].

CONCLUSION

Lockport, *supra*, at 430 U.S. 266 instructs that the question of whether a State can [or here *must*] recognize the *disproportionate* impact[25] of discrete issue elections has been confronted in two types of cases: elections involving "special-interest" governmental bodies of limited jurisdiction, and those dealing with bond referenda. Today this Court is presented with a third - the property tax referendum.

Amicus curiae prays this Court grants review to address the equal protection issues implicated by this classification.

Respectfully submitted,



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APPENDIX

FULL TEXT OF CITED STATE CONSTITUTION

Article XIIIA, §1 – "(a) The maximum amount of any *ad valorem* tax on real property shall not exceed One percent (1%) of the full cash value of such property. The one percent (1%) tax to be collected by the counties and apportioned according to law to the districts within the counties.

(b) The limitation provided for in subdivision (a) shall not apply to *ad valorem* taxes or special assessments to pay the interest and redemption charges on any of the following:

(1) Indebtedness approved by the voters prior to July 1, 1978.

(2) Bonded indebtedness for the acquisition or improvement of real property approved on or after July 1, 1978, by two-thirds of the votes cast by the voters voting on the proposition.

(3) Bonded indebtedness incurred by a school district, community college district, or county office of education for the construction, reconstruction, rehabilitation, or replacement of school facilities, including the furnishing and equipping of school facilities, or the acquisition or lease of real property for school facilities, approved by 55 percent of the voters of the district or county, as appropriate, voting on the proposition on or after the effective date of the measure adding this paragraph. This paragraph shall apply only if the proposition approved by the voters and resulting in the bonded indebtedness includes all of the following accountability requirements:

(A) A requirement that the proceeds from the sale of the bonds be used only for the purposes specified in Article XIIIA, §1(b)(3), and not for any other purpose, including teacher and administrator salaries and other school operating expenses.

(B) A list of the specific school facilities projects to be funded and certification that the school district board, community college board, or county office of education has evaluated safety, class size reduction, and information technology needs in developing that list.

(C) A requirement that the school district board, community college board, or county office of education conduct an annual, independent performance audit to ensure that the funds have been expended only on the specific projects listed.

(D) A requirement that the school district board, community college board, or county office of education conduct an annual, independent financial audit of the proceeds from the sale of the bonds until all of those proceeds have been expended for the school facilities projects.

(c) Notwithstanding any other provisions of law or of this Constitution, school districts, community college districts, and county offices of education may levy a 55 percent vote *ad valorem* tax pursuant to subdivision (b)."

Article XIIIA, §4 – "Cities, Counties and special districts, by a two-thirds vote of the qualified electors of such district, may impose special taxes on such district, except *ad valorem* taxes on real property or a transaction tax or sales tax on the sale of real property within such City, County or special district."

Article XIIIC, §1 – "As used in this article:

(a) 'General tax' means any tax imposed for general governmental purposes.

(b) 'Local government' means any county, city, city and county, including a charter city or county, any special district, or any other local or regional governmental entity.

(c) 'Special district' means an agency of the State, formed pursuant to general law or a special act, for the local

performance of governmental or proprietary functions with limited geographic boundaries including, but not limited to, school districts and redevelopment agencies.

(d) 'Special tax' means any tax imposed for specific purposes, including a tax imposed for specific purposes, which is placed into a general fund."

Article XIIIC, §2 – "Notwithstanding any other provision of this Constitution:

(a) All taxes imposed by any local government shall be deemed to be either general taxes or special taxes. Special purpose districts or agencies, including school districts, shall have no power to levy general taxes.

(b) No local government may impose, extend, or increase any general tax unless and until that tax is submitted to the electorate and approved by a majority vote. A general tax shall not be deemed to have been increased if it is imposed at a rate not higher than the maximum rate so approved. The election required by this subdivision shall be consolidated with a regularly scheduled general election for members of the governing body of the local government, except in cases of emergency declared by a unanimous vote of the governing body.

(c) Any general tax imposed, extended, or increased, without voter approval, by any local government on or after January 1, 1995, and prior to the effective date of this article, shall continue to be imposed only if approved by a majority vote of the voters voting in an election on the issue of the imposition, which election shall be held within two years of the effective date of this article and in compliance with subdivision (b).

(d) No local government may impose, extend, or increase any special tax unless and until that tax is submitted to the electorate and approved by a two-thirds vote. A special tax shall not be deemed to have been increased if it is imposed at a rate not higher than the maximum rate so approved."

Article XIIID, §3 – "(a) No tax, assessment, fee, or charge shall be assessed by any agency upon any parcel of property or upon any person as an incident of property ownership except:

(1) The *ad valorem* property tax imposed pursuant to Article XIII and Article XIIIA.

(2) Any special tax receiving a two-thirds vote pursuant to §4 of Article XIIIA.

(3) Assessments as provided by this article.

(4) Fees or charges for property related services as provided by this article.

(b) For purposes of this article, fees for the provision of electrical or gas service shall not be deemed charges or fees imposed as an incident of property ownership."

Article XIIID, §4 – "(a) An agency which proposes to levy an assessment shall identify all parcels which will have a special benefit conferred upon them and upon which an assessment will be imposed. The proportionate special benefit derived by each identified parcel shall be determined in relationship to the entirety of the capital cost of a public improvement, the maintenance and operation expenses of a public improvement, or the cost of the property related service being provided. No assessment shall be imposed on any parcel which exceeds the reasonable cost of the proportional special benefit conferred on that parcel. Only special benefits are assessable, and an agency shall separate the general benefits from the special benefits conferred on a parcel. Parcels within a district that are owned or used by any agency, the State of California or the United States shall not be exempt from assessment unless the agency can demonstrate by clear and convincing evidence that those publicly owned parcels in fact receive no special benefit.

(b) All assessments shall be supported by a detailed engineer's report prepared by a registered professional engineer certified by the State of California.

(c) The amount of the proposed assessment for each identified parcel shall be calculated and the record owner of each parcel shall be given written notice by mail of the proposed assessment, the total amount thereof chargeable to the entire district, the amount chargeable to the owner's particular parcel, the duration of the payments, the reason for the assessment and the basis upon which the amount of the proposed assessment was calculated, together with the date, time, and location of a public hearing on the proposed assessment. Each notice shall also include, in a conspicuous place thereon, a summary of the procedures applicable to the completion, return, and tabulation of the ballots required pursuant to subdivision (d), including a disclosure statement that the existence of a majority protest, as defined in subdivision (e), will result in the assessment not being imposed.

(d) Each notice mailed to owners of identified parcels within the district pursuant to subdivision (c) shall contain a ballot which includes the agency's address for receipt of the ballot once completed by any owner receiving the notice whereby the owner may indicate his or her name, reasonable identification of the parcel, and his or her support or opposition to the proposed assessment.

(e) The agency shall conduct a public hearing upon the proposed assessment not less than 45 days after mailing the notice of the proposed assessment to record owners of each identified parcel. At the public hearing, the agency shall consider all protests against the proposed assessment and tabulate the ballots. The agency shall not impose an assessment if there is a majority protest. A majority protest exists if, upon the conclusion of the hearing, ballots submitted in opposition to the assessment exceed the ballots submitted in favor of the assessment. In tabulating the ballots, the ballots shall be weighted according to the proportional financial obligation of the affected property.

(f) In any legal action contesting the validity of any assessment, the burden shall be on the agency to demonstrate that the property or properties in question receive a special benefit over and above the benefits conferred on the public at large and that the amount of any contested assessment is proportional to, and no greater than, the benefits conferred on the property or properties in question.

(g) Because only special benefits are assessable, electors residing within the district who do not own property within the district shall not be deemed under this Constitution to have been deprived of the right to vote for any assessment. If a court determines that the Constitution of the United States or other federal law requires otherwise, the assessment shall not be imposed unless approved by a two-thirds vote of the electorate in the district in addition to being approved by the property owners as required by subdivision (e)."

Article XIIID, §6 – "(a) Procedures for New or Increased Fees and Charges. An agency shall follow the procedures pursuant to this section in imposing or increasing any fee or charge as defined pursuant to this article, including, but not limited to, the following:

(1) The parcels upon which a fee or charge is proposed for imposition shall be identified. The amount of the fee or charge proposed to be imposed upon each parcel shall be calculated. The agency shall provide written notice by mail of the proposed fee or charge to the record owner of each identified parcel upon which the fee or charge is proposed for imposition, the amount of the fee or charge proposed to be imposed upon each, the basis upon which the amount of the proposed fee or charge was calculated, the reason for the fee or charge, together with the date, time, and location of a public hearing on the proposed fee or charge.

(2) The agency shall conduct a public hearing upon the proposed fee or charge not less than 45 days after mailing

the notice of the proposed fee or charge to the record owners of each identified parcel upon which the fee or charge is proposed for imposition. At the public hearing, the agency shall consider all protests against the proposed fee or charge. If written protests against the proposed fee or charge are presented by a majority of owners of the identified parcels, the agency shall not impose the fee or charge.

(b) Requirements for Existing, New or Increased Fees and Charges. A fee or charge shall not be extended, imposed, or increased by any agency unless it meets all of the following requirements:

(1) Revenues derived from the fee or charge shall not exceed the funds required to provide the property related service.

(2) Revenues derived from the fee or charge shall not be used for any purpose other than that for which the fee or charge was imposed.

(3) The amount of a fee or charge imposed upon any parcel or person as an incident of property ownership shall not exceed the proportional cost of the service attributable to the parcel.

(4) No fee or charge may be imposed for a service unless that service is actually used by, or immediately available to, the owner of the property in question. Fees or charges based on potential or future use of a service are not permitted. Standby charges, whether characterized as charges or assessments, shall be classified as assessments and shall not be imposed without compliance with §4.

(5) No fee or charge may be imposed for general governmental services including, but not limited to, police, fire, ambulance or library services, where the service is available to the public at large in substantially the same manner as it is to property owners. Reliance by an agency on any parcel map, including, but not limited to, an assessor's parcel map, may be considered a significant factor in determining whether a fee or charge is imposed as an

incident of property ownership for purposes of this article. In any legal action contesting the validity of a fee or charge, the burden shall be on the agency to demonstrate compliance with this article.

(c) Voter Approval for New or Increased Fees and Charges. Except for fees or charges for sewer, water, and refuse collection services, no property related fee or charge shall be imposed or increased unless and until that fee or charge is submitted and approved by a majority vote of the property owners of the property subject to the fee or charge or, at the option of the agency, by a two-thirds vote of the electorate residing in the affected area. The election shall be conducted not less than 45 days after the public hearing. An agency may adopt procedures similar to those for increases in assessments in the conduct of elections under this subdivision.

(d) Beginning July 1, 1997, all fees or charges shall comply with this section."

FULL TEXT OF CITED STATE STATUTES

California Elections Code, §321 – "'Elector' means any person who is a United States citizen 18 years of age or older and a resident of an election precinct at least 15 days prior to an election."

California Elections Code, §18521 – "A person shall not directly or through any other person receive, agree, or contract for, before, during or after an election, any money, gift, loan, or other valuable consideration, office, place, or employment for himself or any other person because he or any other person:

(a) Voted, agreed to vote, refrained from voting, or agreed to refrain from voting for any particular person or measure.

(b) Remained away from the polls.

(c) Refrained or agreed to refrain from voting.

(d) Induced any other person to:

(1) Remain away from the polls.

(2) Refrain from voting.

(3) Vote or refrain from voting for any particular person or measure.

Any person violating this section is punishable by imprisonment in the state prison for 16 months or two or three years."

Government Code §16271(d) – "As used in this chapter…'Special district' means any agency of the state for the local performance of governmental or proprietary functions within limited boundaries. 'Special district' includes a county service area, a maintenance district or area, an improvement district or improvement zone, or any other zone or area formed for the purpose of designating an area within which a property tax rate will be levied to pay for a service or improvement benefiting that area.

County free libraries established pursuant to Chapter 2 (commencing with §27151) of Division 20 of the Education Code; areas receiving county fire protection services pursuant to §25643 of the Government Code; and county road districts established pursuant to Chapter 7 (commencing with §550) of Division 2 of the Streets and Highways Code, shall be considered 'special districts' for all purposes of this chapter.

'Special district' does not include a city, a county, a school district or a community college district. 'Special district' does not include any agency which is not authorized to levy a property tax rate, except the Bay Area Pollution Control District."

California Government Code, §26912 – "(a) For the purposes of this section, a local agency includes a city, county, city and county, and special district, as such terms

are defined in Article 1 (commencing with §2201) of Chapter 3 of Part 4 of Division 1 of the Revenue and Taxation Code, if such local agency levied a property tax during the 1977-78 fiscal year or if a property tax was levied for such local agency for such fiscal year, except that the Bay Area Pollution Control District shall be considered a local agency.

(b) For the 1978-79 fiscal year only, the amount of revenue derived from levying a tax pursuant to subdivision (b) of §2237 of the Revenue and Taxation Code shall be allocated by the county auditor, subject to the allocation and payment of funds, as provided for in subdivision (b) of §33670 of the Health and Safety Code, to each local agency, school district, county superintendent of schools, and community college district in the following manner:

(1) (A) The auditor shall determine the local agency share of 1978-79 property tax revenue by dividing the amount of property tax revenue received by all local agencies in 1977-78 by the total amount of property tax revenue received by all local agencies, school districts, community college districts, and county superintendents of schools in the 1977-78 fiscal year, and multiplying the quotient by the total amount of revenue generated pursuant to subdivision (b) of §2237 of the Revenue and Taxation Code.

(B) For each local agency, the county auditor shall compute a factor equal to the average amount of property tax revenue received in the three fiscal years prior to the 1978-79 fiscal year by each local agency within the county, divided by the average amount of property tax revenue received by all such agencies during the three fiscal years prior to the 1978-79 fiscal year. The county auditor shall multiply the factor for each local agency by the amount of revenue determined pursuant to subparagraph (A).

(C) Notwithstanding subparagraph (B), in each case where a local agency has been formed in the past three years and has assumed the duties of another local agency, it shall be entitled to the average amount of revenue for the prior

three years of the local agency from whom it assumed its duties.

(D) For the purposes of subparagraphs (A) and (B), local agency shall not include a local agency formed after January 1, 1976.

(2) (A) The county auditor shall determine the school share of the 1978-79 fiscal year property tax revenue by subtracting the local agency share, as determined under subparagraph (A) of paragraph (1) of this subdivision, from the total amount of revenue generated pursuant to subdivision (b) of §2237 of the Revenue and Taxation Code.

(B) For each school district, county superintendent of schools, and community college district, the county auditor shall compute a factor equal to the amount of property tax revenue received in the 1977-78 fiscal year by such district and the county superintendent of schools within the county divided by the total amount of property tax revenue received by all such districts and the county board of education in the 1977-78 fiscal year. The county auditor shall multiply the factor for each school district, county superintendent of schools, and community college district by the amount of revenue determined pursuant to subparagraph (A). For the purpose of this paragraph, local agencies formed after January 1, 1976, shall be considered school districts.

(3) For the purpose of this subdivision, the amount of proceeds of any property tax actually and separately levied for the specific purpose of making annual payments for the interest and principal on outstanding general obligation bonds or other indebtedness approved by the voters prior to July 1, 1978, including tax rates levied pursuant to Part 10 (commencing with §15000) of Division 1 of §§39308, 39311, 81338, and 81341 of the Education Code, shall be excluded from all calculations.

(4) The amounts computed under this subdivision shall be the amount of property tax revenue to be allocated to each local agency for the 1978-79 fiscal year.

(5) As used in this section, 'property tax revenue' includes the amount of state reimbursement for the homeowners' and business inventory exemptions.

(c) For the 1978-79 fiscal year only, the amount of state reimbursement to each county with respect to property tax losses pursuant to the homeowners' exemption under §218 of the Revenue and Taxation Code, the business inventory exemption under §219 of the Revenue and Taxation Code, and the special treatment accorded livestock, motion pictures and wine and brandy under §§5523, 988, and 992, respectively, of the Revenue and Taxation Code, shall be allocated by each county auditor, subject to the allocation and payment of funds, as provided in subdivision (b) of §33670 of the Health and Safety Code, to local agencies, school districts, county superintendents of schools, and community college districts within the county pursuant to the proportions established in subdivision (b). This subdivision shall not apply to reimbursements with respect to tax rates levied to pay the interest or principal on outstanding general obligation bonds or other indebtedness approved by the voters prior to July 1, 1978.

(d) For local agencies, school districts, and community college districts located in more than one county, the county auditor of each county in which such local agency or district is located shall, for the purposes of computing the amount for such local agency or district pursuant to paragraphs (1) and (2) of subdivision (b), treat the portion of the local agency or district located within that county as a local agency or district."

California Government Code, §50077 – "(a) Except as provided in §7282 of the Revenue and Taxation Code, the legislative body of any city, county, or district may, following notice and public hearing, propose by ordinance or resolution the adoption of a special tax. The ordinance or resolution shall include the type of tax and rate of tax to be

levied, the method of collection, and the date upon which an election shall be held to approve the levy of the tax. The proposition shall be submitted to the voters of the city, county, or district, or a portion thereof, and, upon the approval of two-thirds of the votes cast by voters voting upon the proposition, the city, county, or district may levy the tax.

(b) The legislative body of a city, or district, may provide for the collection of the special tax in the same manner and subject to the same penalty as, or with, other charges and taxes fixed and collected by the city, or district, or, by agreement with the county, by the county on behalf of the city, or district. If the special taxes are collected by the county on behalf of the city, or district, the county may deduct its reasonable costs incurred for the service before remittal of the balance to the city.

(c) The legislative body of a local agency which is conducting proceedings for the incorporation of a city, the formation of a district, a change of organization, a reorganization, a change of organization of a city, or a municipal reorganization, may propose by ordinance or resolution the adoption of a special tax in accordance with the provisions of subdivision (a) on behalf of an affected city or district.

(d) As used in this section 'district' means an agency of the state, formed pursuant to general law or special act, for the local performance of governmental or proprietary functions within limited boundaries."

California Government Code, §50079 – "(a) Subject to §4 of Article XIIIA of the California Constitution, any school district may impose qualified special taxes upon the district pursuant to the procedures established in Article 3.5 (commencing with §50075) and any other applicable procedures provided by law.

(b) As used in this section, 'qualified special taxes' means special taxes which apply uniformly to all taxpayers

or all real property within the school district, except that 'qualified special taxes' may include special taxes which provide for an exemption from those taxes for taxpayers 65 years of age or older.

'Qualified special taxes' do not include special taxes imposed on a particular class of property or taxpayers."